XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000061469

CA 1147/97 (02)

APPEAL OF PRISONER

Division bench (criminal)

No. 547/96 Name लखनलाल

Father's name धनसिंह उम्र 30 वर्ष

Residence ग्राम- कुरली, थाना- बिल्ही, Age जिला- राजनांद गांव, म.प्र.

Sentenced to आजीवन कारावास एवं अर्थदंड On 26/4/97

Under section 302 भा.दं.वि. by अति. सत्र न्यायाधीश कवर्धा, जिला- राजनांद गांव (म.प्र.)

It is explained to the prisoner that if he states of wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent 29/5/97

4 Whether the prisoner wishes to be represented or not – Yes / No

No. 547/96 Name लखनलाल s/o धनसिंह

Confined in केन्द्रीय Jail रायपुर म.प्र.

No. 174/विधि/97 Dated 29/5/ 1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अतिरिक्त पंजीयक महोदय माननीय उच्च न्यायालय म.प्र. जबलपुर together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

सलग्न :- सत्र प्रकरण क्रं. 107/96 की सत्यापित निर्णय प्रति सिपी।

Superintendent,
Central Jail, Raipur. (M.P.)
..... Jail .....

Date of receipt in ..... office ... with in time

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

High Court of Madhya Pradesh
JABALPUR
9 JUN 1997
Reg. No. 548
Recept Clerk
High Court, Jabalpur

Date of receipt in Appellate Court .....

(P. T. O.)

(35)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1147/1997

Lakhanlal

-Versus-

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Hon'ble Shri Justice L. C. Bhadoo

agree

Sd/-
L.C. Bhadoo
Judge

Sd/-
(JUDGE)
01st.09.2005

(36)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 1147/1997

Lakhanlal

Vs.

State of Chhattisgarh

CORAM: HON'BLE SHRI JUSTICE L. C. BHADOO &
HON'BLE SHRI JUSTICE DILIP RAOSAHEB DESHMUKH, JJ

Shri Abhay Tiwari for the appellant.

Shri Sunil Otwani, Panel Lawyer for the State.

J U D G M E N T
(Delivered on 9th.09.2005)

Per Dilip Raosaheb Deshmukh, J.

This appeal is directed against the judgment dated 26.04.1997 delivered by Shri R.N.Chandrakar, Additional Sessions Judge, Khairagarh, Link Court at Kawardha in sessions trial No.107/1996 whereby the appellant was convicted under Section 302 I.P.C. for committing murder of Motilal Gond in the night of 23rd April 1996 and sentenced to imprisonment for life and a fine of Rs.500/-, in default, to undergo additional rigorous imprisonment for three months.

2. Briefly stated the prosecution story is that deceased Motilal Gond was a *Baiga* who used to cure illness by *Jhaadphunk*. He was treating the son of the appellant. However, when the son of the appellant did not get cured, the appellant got annoyed. On the night of 23.4.1996, the deceased Motilal and Nohar P.W.3 had gone to the house of the appellant and had consumed liquor. Thereafter, the appellant caused the death of Motilal by assaulting him by a *lathi*.

3. On the next day, Gulab Singh P.W.1 who was in search of Motilal for the treatment of his son did not find Motilal in his house. He went

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around the village and saw that the stick and *chappals* of Motilal were lying in the courtyard of the appellant. On being asked, the appellant made an extra judicial confession before Gulab Singh P.W.1, Gajru Singh P.W.2, Phaguram P.W.4, Sunderlal P.W.6 and Gugulu P.W.8. F.I.R. was lodged by Gulab Singh P.W.1 at Police Station Chilphi, District Rajnandgaon on 25.04.1996 at about 5.00 P.M. vide Ex.P.11. Vide Ex.P.3 Panchnama of dead body of Motilal was prepared on 26.4.1996 by Sub-Inspector S.P.Bhagat P.W.9 who found the body lying inside the house of the appellant. Foul smell was coming from the body. Post-mortem on the dead body was conducted by Dr. V.M. Deshpande on 26.4.1996 who found that the body was decomposed and no external injury could be detected due to decomposition of the body. According to Dr. Deshpande, no opinion could be given as to the cause of death due to advanced decomposition. Time passed since death was within 48 to 72 hours before starting the autopsy. On the memorandum of the appellant Ex.P.W.4, one *Tendu lathi* was seized from the house of the appellant vide Ex.P.5. Another *lathi* and pair of *Chappals* belonging to the deceased were seized from the courtyard of the appellant vide Ex.P.1. Chunga Bai P.W.7, wife of the deceased, identified the *lathi* vide Ex.P.7 to be that of her husband. After completion of investigation, the appellant was prosecuted for committing murder of Motilal under Section 302 I.P.C.

4. The appellant abjured his guilt. He admitted the genuineness of the post-mortem report under Section 294 Cr.P.C. which was marked as Ex.P.12. No evidence in defence was adduced. The prosecution examined as many as ten witnesses. Relying upon the ocular testimony of Nohar P.W.3 and the evidence of Gulab Singh P.W.1, Gajru Singh P.W.2, Chhotu P.W.5, Sunderlal P.W.6 and Gugulu P.W.8 relating to the extra judicial confession coupled with the evidence relating to the recovery of

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the dead body of Motilal from the house of the appellant and the seizure of his *lathi* and *Chappals* also from the appellant's house, the trial Court convicted the appellant under Section 302 I.P.C. for committing murder of Motilal and sentenced him as aforesaid.

5. In this appeal, the learned counsel for the appellant has mainly contended that the offence committed by the appellant did not travel beyond Section 304 part-II of the I.P.C. since the appellant and the deceased had consumed Alcohol in the house meaning thereby that the appellant was intoxicated. Besides, the post-mortem report of Dr. V. M. Deshpande did not show that there was any external injury on the body of the deceased. As a result the requisite intention for causing the death of Motilal could not be attributed to the appellant and the offence, if any, would not travel beyond Section 304 part II of the I.P.C. On the other hand, learned counsel for the State argued in support of the judgment of the trial Court.

6. We have heard the rival contentions and gone through the record of the trial Court. We find that there is evidence of Nohar P.W.3 that he and the deceased Motilal had gone to the house of the appellant where they had consumed liquor and thereafter the appellant saying that Motilal did not cure his child assaulted him by *lathi*. The testimony of Gulab Singh P.W.1 shows that while he went in search of Motilal, he saw the *lathi* and *Chappals of* Motilal lying in the courtyard of the appellant and had asked him about Motilal. He has deposed that the appellant had told him that since Motilal had not cured his ailing son, he had killed him by assaulting with a *lathi*. This testimony is corroborated by Phaguram P.W.4, Chhotu P.W.5, Sunderlal P.W.6 and Gugulu P.W.8. Thus, the evidence of these witnesses is consistent, reliable and has remained unrebutted in cross-examination. Apart from this, the fact of recovery of the body of the

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deceased as also his *lathi* and *Chappals* from the house of the appellant is also a serious incriminating circumstance against the appellant which proves his complicity in the death of Motilal. After perusing the evidence on record, in our considered opinion, the trial Court has rightly concluded that the appellant had caused the death of Motilal by assaulting by *lathi*.

7. The only question which now remains to be seen is as to what offence did the appellant commit. It is not disputed that due to decomposition of body, no external injury could be detected on the body of Motilal. On internal examination also no fracture was found. The cause of death could also not be opined. It has come in evidence of Nohar P.W.3 that the appellant and the deceased had consumed Alcohol before the occurrence took place. Therefore, on the facts and circumstances of the case, in our considered opinion, at the most it can be inferred that the appellant while assaulting Motilal had the knowledge that he was likely to cause death of Motilal. Requisite intention for brining home the guilt under Section 302 I.P.C. could not be attributed to the appellant in the facts and circumstances of the case. The offence committed by the appellant, therefore, falls under Section 304 part-II of the I.P.C.

8. In the result, the appeal is partly allowed. The appellant is acquitted of the charge under Section 302 I.P.C. and is instead, convicted under Section 304 part-II of the I.P.C. The appellant is in jail since 28th April 1996 i.e. for more than 9 years. In our considered opinion, the award of custodial sentence already undergone by the appellant would meet the ends of justice. We order accordingly.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dilip Raosaheb
Deshmukh
Judge